



## Request for City Council Committee Action From the Department of Public Works

**Date:** February 26<sup>th</sup>, 2013

**To:** Honorable Sandra Colvin Roy, Chair Transportation & Public Works Committee

**Subject:** **Utility Agreement between the City of Minneapolis and 1313 5th STREET  
MN OWNER, LLC**

**Recommendation:**

Authorize the appropriate City Officers to negotiate terms and conditions and to execute the final document.

**Previous Directives:**

- June 13<sup>th</sup>, 1968, vacation of 13<sup>th</sup> Ave SE by Council Resolution,
- September 27<sup>th</sup>, 1968, Easement Deed from Special School District No. 1, approved by Council

**Prepared by:** Paul Miller, Project Manager, 673-3603  
Dennis Morris, Right of Way Specialist, 673-3607

**Approved by:**

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Steven A. Kotke, P.E., City Engineer, Director of Public Works

**Presenters:** Paul Miller, Project Manager, Department of Public Works, TP&E

**Reviews**

Permanent Review Committee (PRC):	Approval	<b>NA</b>	Date
Civil Rights Affirmative Action Plan	Approval	<b>NA</b>	Date
Policy Review Group (PRG):	Approval	<b>NA</b>	Date

**Financial Impact** (Check those that apply)

- ☒ No financial impact - or - Action is within current department budget (If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Business Plan: ☒ Action is within the plan. ☐ Action requires a change to plan.

- \_\_\_\_\_ Other financial impact (Explain):
- \_\_\_\_\_ Request provided to department's Finance Dept. contact when provided to the Committee Coordinator

### **Community Impact**

Neighborhood Notification: Not Applicable

City Goals: A SAFE PLACE TO CALL HOME: the city's infrastructure will be well-maintained, people will feel safe in the city.

Comprehensive Plan: Not Applicable

Zoning Code: Not Applicable

### **Background/Supporting Information**

1313 5th STREET MN OWNER, LLC ("Owner") has presented the City with a development proposal for the property at 1313 5<sup>th</sup> St. SE. This is the former Marshall High School building which has been converted to office use. The Developer proposes to demolish this structure and build a larger structure in its place.

In 1968 the School District petitioned the City to vacate 13<sup>th</sup> Ave SE between 6<sup>th</sup> and 5<sup>th</sup> St's SE. There was (and still is) a 42 inch storm drain which runs through the street. As a condition of the vacation, the School District granted the City an easement for the utility. The utility is currently located under a surface parking lot.

The Owner's proposed improvements would place a new structure over the existing utility. The City and the Owner have looked at the possibility of rerouting the utility around the proposed structure; however, City staff has concluded that, due to the utility's size and capacity, the best solution is to allow the structure over the utility. As a means of protecting the City's easement interest and its ability to access the utility for future maintenance or replacement, the Owner has proposed plans which include: a) rebuilding the utility with a surrounding encasement; and b) building access manholes in the City's right of way at locations immediately North and South of the proposed structure. Staff is recommending that the City allow the proposed location of Owner's structure on condition that Owner enter into an Agreement which memorializes the following terms:

- Owner will assume all responsibility for construction and costs associated with reconstruction of the utility and its appurtenances.
- Owner must construct the new utilities according to the City's timeline.
- Owner must construct the new utilities according to City standards and design approvals.
- Owner must provide warranties as set out in the Agreement.
- Owner must obtain insurance and provide payment and performance bonds.
- Owner must acknowledge City ownership of the utility and its appurtenances on condition of and following City acceptance of the same.
- Owner must indemnify the City against liability associated with construction and/or potential nuisances or harms arising out of the location of Developer's structure on the easement area.
- Owner must acknowledge that its structure on the easement area will not affect the City's future rights in and to the easement.
- Owner must obtain legal construction access from impacted adjacent property.
- Owner must allow the City to access the storm sewer through owner's structure if the City is unable to make necessary repairs or replacements via the adjacent manholes.
- Owner must record the Agreement against the property, and in doing so bind its successors to the terms set out in the Agreement.

Staff is seeking Council approval to execute and enter into the Agreement.

Attachments: Site Plan Map with Easement location